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Testimony of the Office of the Public Defender, State of Hawaii to the Senate
Committee on Judiciary

3-27-2024

Chair: Sen. Karl Rhoads
Vice Chair: Sen. Mike Gabbard
Honorable Committee Members

The Office of the Public Defender respectfully **opposes** HB 1842, HD 1.

The purpose of this Bill is to increase the penalties for HRS section 132-13 from \$500 to \$5,000 for each day a person or entity is in violation of said provision, and that each day is an individual violation and not a continuous course of conduct. Furthermore, this measure, amends HRS section 708-8254 (Arson in the Fourth Degree) by adding sub-section (3) to make Arson in the Fourth Degree a Class C felony, if the violation occurs during a red flag warning and within a designated red flag warning geographical area, and that a person is strictly liable with respect to the attendant circumstances that the red flag warning was in effect.

This bill assumes a common fallacy: that harsher penalties deter people from committing crimes. This assumption neglects to confront the reasons for criminal behavior, and why currently offenses are classed according to liability, results of the conduct and states of mind.

If the intent of this bill is to gain acceptance of safety concerns, compliance with relevant safety practices or to deter potential offenders, then the greater penalties suggested miss the mark, and may result in unintended consequences. Increasing fines from \$500 per day to \$5,000 per day will place an extreme burden on poorer individuals that would be unable to pay such a hefty fine, or to mitigate the cause of potential harm. If the purpose of this language is to be better able to deal with corporations that would ignore such warnings, then perhaps a more effective approach would be to give a judge the ability to levy fines in accordance with a defendant's financial circumstances, or for government agencies to offer aid to poorer individuals to mitigate those potential fire hazards.

The suggested changes to HRS section 708-8254 would penalize, by way of a class C felony, any person for creating a *potential* problem, by causing a fire in a red flag geographical area while under such a warning. It goes further to include that said person does not need to be aware of the red flag warning or that said person is in a red flag geographical area. Thus, it makes the issue of attendant circumstances relative to the red flag warning one of strict liability. The language making the offense strictly liable is counter intuitive to the concept of people being warned to be more careful of their activities while under the red flag warning and within a geographical area under said warning. Arson in the Fourth Degree is the only offense for which “recklessly” causing a fire is a violation of the Arson statute. Thus, if a person unintentionally causes a fire, without any knowledge that they are under and within a designated red flag warning area, they would be guilty of a class C felony, regardless of the level of actual damage caused. In other words, if one recklessly started a fire, put it out, but having caused minimal damage to property in any manner, said person would be guilty of a class C felony.

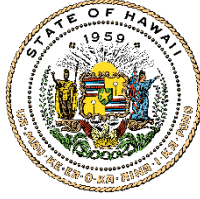
The current statutory structure for Arson offenses considers the actual damage to property or risk to others in formulating penalties that call for one year of incarceration to twenty years of incarceration. No other Arson statute takes into consideration the setting of a fire during a red flag warning or within a designated red flag area, because regardless of the red flag status it is the actual harm that is sought to be prevented or punished, and not the *potential harm*. If the purpose of this bill is to highlight the dangers of red flag conditions or locations, then knowing of the warning and disregarding it would a logical reason to increase a penalty or punishment, but to increase said penalties, without such notice does nothing to prevent said crimes or to educate the public on the dangers of red flag conditions.

For the above listed reasons, the OPD respectfully opposes this measure.

Thank you for the ability to comment on this bill.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
JUDICIARY

Wednesday, March 27, 2024
9:45 AM

State Capitol, Conference Room 016 & Via Videoconference

In consideration of
HOUSE BILL 1842 HOUSE DRAFT 1
RELATING TO FIRE PREVENTION

House Bill 1842 House Draft 1 proposes to increase the maximum fine for violations of the fire protection laws; specifies that each day a violation exists or continues to exist shall constitute a distinct and separate offense; and raises the criminal penalty for the offense of arson in the fourth degree to a class C felony if the offense was committed during the time period and within the geographic area in which a red flag warning was in effect; provides that the state of mind requirement is not applicable to the fact that the red flag warning was in effect and that the actor is strictly liable with respect to the attendant circumstance that the red flag warning was in effect. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

Over 99% percent of fires in Hawai'i are human caused. In the University of Hawai'i's review of 12,000 fires, 800 had a determined cause, and 20% of those fires were suspected arson. Determining the cause of fires, particularly arson, is crucial to ensuring accountability for the destruction of properties, environments, and injury or death. Effective fire investigation is also extremely important for insurance claims. Raising the penalties for arson in the state while also reinstating the Office of the Fire Marshal and empowering the Marshal's office to investigate fires and arrest suspects, is a necessary step towards ensuring the safety and protection of Hawai'i's communities, rangelands, and forested watersheds.

Mahalo for the opportunity to provide testimony in support of this measure.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 016
Wednesday, March 27, 2024 AT 9:45 A.M.

To The Honorable Senator Karl Rhoads, Chair
The Honorable Senator Mike Gabbard, Vice Chair
Members of the committee on Judiciary

SUPPORT HB1842 HD1 RELATING TO FIRE PREVENTION

The Maui Chamber of Commerce **SUPPORTS HB1842 HD1.**

The Chamber supports the increase in the class of felony for arson. We especially applaud the language that means that ignorance of the red flag warning does not lower the classification of the felony.

We are concerned about the potential impact to businesses and residents given the wording of the penalty for violations of fire protection laws proposed in HRS 132-13. Many residents and businesses don't necessarily know the ins and outs of the fire protection laws. Therefore, it would strengthen the bill if language were inserted allowing the owner, occupant, or other person some time (at the fire chief's discretion) to rectify the order. There may be circumstances that prevent immediate compliance to the order. For instance, we saw after the Aug 8 wildfires where many property owners invested significant money to create firebreaks and mow their land, but had to wait for equipment and/or hired companies to do the actual work. We are concerned that based on the language in the bill, businesses and residents in that situation may be faced with \$5,000 per day charges when they are trying to remediate the situation. We fully support the increase in the fine amount and daily assessment for anyone who refuses to comply.

We suggest, and wholeheartedly support, additional education to make sure that public and private property owners maintain their property in a safe manner.

For these reasons we **SUPPORT HB1842 HD1**, but request that the Senate consider our comments regarding leeway in complying with the fire chief's order.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

HB-1842-HD-1

Submitted on: 3/24/2024 5:59:53 PM

Testimony for JDC on 3/27/2024 9:45:00 AM

Submitted By	Organization	Testifier Position	Testify
Jackie Keefe	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee on Judiciary,

My name is Jackie Keefe and I am a resident of Lahaina. I am writing **in support of HB1842 HD1, with requests.**

I agree with the testimony provided by the Maui Chamber of Commerce at this bill's last hearing, that education of the public is important upon implementation of this bill.

My other concern, having worked closely with both firefighters and landowners who were affected by the August 2023 wildfires, is that there is no enforcement of these fire safety statutes. Most of the fuel for these fires was uncut grasses that lacked firebreaks. There are state and county fire codes in place to control this vegetation but no enforcement.

I also spoke with someone whose property borders the Maui Paintball property and the fire marshall had been out 3 days before the fire and told him "there's nothing we can do about their wooden pallets because it's private property."

I hope that you will consider amendments. Thank you for your consideration.

Jackie Keefe

Lahaina, Maui